

Corps Regional Conditioning Process for the 1999 NWP

1. The publication of the proposed NWPs in the Federal Register begins the Section 401 water quality certification and Coastal Zone Management (CZMA) consistency determination processes. [July 1, 1998, Federal Register]
2. Each division will hold a public hearing to solicit regional comments on the NWPs, including regional conditions. (During the 60-day comment period for the proposed NWPs, there will be a national public hearing in Washington, D.C. to solicit comments on the NWPs.)
3. Each District publishes a local public notice to solicit comments on the proposed NWPs, including regional conditions.
4. Initial district public notices included existing regional conditions for NWPs 3, 7, 12, 14, 26, 27, and 40 to solicit comments on the applicability of those regional conditions for the proposed modified NWPs.
5. District public notices will request suggestions for additional regional conditions for the new and modified NWPs.
6. After the public notice comment period the District will hold a public meeting, including Federal and State agencies, to obtain their views on regional conditioning. The District will then develop additional regional conditions, based in part on comments received in response to the public notice, public meeting, and agency meetings. (Additional coordination will be held with Federal and State agencies as necessary.)
7. After agency coordination and the public meeting, the District will issue a second public notice, for a 30-day comment period, to propose regional conditions for the new and modified NWPs and to solicit comments on the suggested additional regional conditions.
8. Further agency coordination will occur to develop final regional conditions. During this process, the District will meet with local representatives of the U.S. Fish and Wildlife Service and National Marine Fisheries Service to develop or modify local operating procedures to ensure that activities authorized by NWPs comply with the Endangered Species Act, as necessary.
9. The draft new and modified NWPs will be published in the Federal Register for a 45-day comment period. (July 1999)
10. Concurrent with this Federal Register notice, districts issue public notices announcing their draft regional conditions for the same 45-day comment period. (July 1999) Districts will post their draft regional conditions on Internet home pages.
11. Between the issuance of the public notice to solicit comments on the draft NWPs and regional conditions (July 1999) and the issuance of the final NWPs and Corps regional

conditions (October 1999), the District Engineer will meet with the Regional Administrator (RA) of EPA and the Regional Directors (RDs) of FWS and NMFS to discuss the draft regional conditions. (If such a meeting occurred before this period, an additional meeting is optional.)

Clarification: This requirement to meet is for the actual District Engineer, RA, and RDs. If the specific individuals do not meet, then the requirement in paragraph 11, above, has not been met. The District Engineer cannot designate another individual to represent the district at this meeting, unless the District Engineer is away from the district for a long period of time. In this case, the designated acting District Engineer can attend this meeting. Likewise, the RA of EPA and/or the RDs of FWS and NMFS cannot designate a subordinate to attend the meeting in his or her place. We recognize that the District Engineers cannot force the RA or RDs to meet with him or her. The District Engineer should offer to meet with the RA or RD. If the RA or RD does not want to meet with the District Engineer to discuss the draft regional conditions, then the district should briefly document this in writing and forward a copy to CECW-OR as soon as possible. Also, please notify CECW-OR of the date of these meetings and state whether the meeting took place in person or by telephone.

12. No later than two weeks prior to the publication of the Federal Register notice announcing the issuance of the new and modified NWP (September 1999), CECW-OR will forward the text of the final NWP, general conditions, and definitions, in addition to the final NWP decision documents to MSCs and Districts so that Divisions and Districts can finalize their supplemental decision documents for regional conditions. The supplemental decision documents will be done in the format specified in the memorandum dated April 15, 1999.

13. CECW-OR publishes the final NWP, general conditions, and definitions in the Federal Register to begin the final Section 401 water quality certification and CZMA consistency determination processes (October 1999). At the same time, each District will place its final Corps regional conditions on its Internet home page and indicate that the 401/CZMA determinations and conditions will be placed on the home page when the NWP become effective.

14. The 401/CZMA agencies will have 60 days from the date of publication to make their final 401/CZMA determinations.

15. During the 60-day 401/CZMA period, the District will meet with representatives of the 401 certification and CZMA agencies to discuss the 401/CZMA determinations and regional conditions that will allow issuance of 401 certifications and CZMA concurrence determinations.

16. At the close of the 60-day period, the NWP, Corps regional conditions, and 401/CZMA determinations, including any conditions, become effective. Failure of the State or Tribe to act by the close of the 60-day period will be treated as a waiver of 401 or CZMA requirements.

17. The District will place the 401/CZMA determinations, including conditions, on its Internet home page, with a link to the NWP on the HQ Regulatory home page.

18. The new and modified NWPs, including Corps and 401/CZMA regional conditions become effective as NWP 26 expires. (December 1999)

19. The District may propose additional regional conditions at a later time.